

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO.
	:	93-0264
v.	:	
	:	
AMIN A. RASHID	:	

**MEMORANDUM**

Giles, C.J.

October 27, 2000

Joyce K. Rashid, the wife of defendant Amin A. Rashid, has moved the court to order the United States of America to turn over to her the proceeds of the government's sale of a home that was forfeited as a result of her husband's federal criminal convictions. Because Mrs. Rashid can offer no legal grounds for entitlement to the money, the Motion is denied.

**Factual and Procedural Background**

On December 27, 1993, a jury in this court found Amin A. Rashid guilty of fifty-four counts of an indictment, which encompassed mail fraud, wire fraud, and money laundering. All the criminal convictions stemmed from Mr. Rashid's involvement in fraudulent commercial loan schemes.

Thereafter, the jury rendered a special verdict as to criminal forfeiture. According to 18 U.S.C. § 982(a)(1), a

defendant convicted of the money laundering offenses must "forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property." Based upon the evidence adduced, the jury concluded Mr. Rashid must forfeit to the United States both the home that had been purchased with the fraud proceeds, 444 East Mount Pleasant Avenue, and the sum of \$363,522.75. Judgment was molded and entered on the record immediately following the verdict. The forfeiture order pursuant to count 57 of the indictment was announced from the bench to conform to the jury's verdict. (Trial Transcript December 27, 1993, p. 32-33).

In March 1994, Mr. Rashid was sentenced to 168 months incarceration, assessed a mandated \$2,700, fined \$15,000, and ordered to pay \$1,696,470 in restitution to victims of his crimes. A few months later, Mr. Rashid filed for bankruptcy in the bankruptcy court of this judicial district.

On May 18, 1994, this court entered another forfeiture Order which spelled out in greater detail the forfeiture of 444 East Mount Pleasant Avenue to the United States. As part of that Order, this court required notice of the forfeiture to be published and for the United States to give direct notice to all known interested parties so that third parties might assert any possible interest in the property before the United States took final control of the property. After finding that the home's

mortgagee, Society Hill Savings and Loan, was entitled to some interest in the property, this court entered a Judgment and Final Order of Forfeiture on May 16, 1997 that recognized that the right, title, and interest of the United States in the real property was subject only to the government's obligation to pay Society Hill Savings and Loan the balance due from its loan.

Mrs. Rashid brings this action to recover \$1816.87, the proceeds of the sale of 444 East Mount Pleasant Avenue. Her claim stems from the third circuit's ruling issued in Amin Rashid's bankruptcy proceedings. In In re Rashid, 210 F.3d 201 (3d Cir. 2000), a panel overturned a district court decision that had not allowed Mr. Rashid to discharge in bankruptcy the debt created by the restitution order that was part of the criminal sentence. The third circuit held that, "Rashid's restitution obligation is not exempt from discharge." 210 F.3d at 208. As such, the circuit court remanded the matter to the district court with instructions to discharge Mr. Rashid's obligation to pay the restitution ordered by this court. 210 F.3d at 209.

As part of the final order of forfeiture of the property to the United States, this court included a provision at the request of the government that any proceeds from that sale should be transferred by the U.S. Marshal to designated victims of Mr. Rashid's fraud. Mrs. Rashid argues implicitly that the proceeds of the government's sale of the Rashid home qualify as

restitution and should be discharged. Mrs. Rashid also claims, without any support from the record, that "[t]he Court has on prior occasion ruled that any proceeds of the sale of 444 East Mount Pleasant Avenue remaining after payment and costs of restitution be distributed to Joyce K. Rashid." (Joyce K. Rashid's Motion to Recover Proceeds at 2). Finally, Mrs. Rashid urges that since Mr. Rashid need not pay the restitution obligation, the \$1816.67 is the amount "remaining after payment and costs of restitution" and should be returned to her. Id.

This court denies Mrs. Rashid's motion because the third circuit's decision in In re Rashid applies only to this court's restitution Order and does not apply to the proceeds of the forfeiture to the United States. Further, this court has never stated, nor is there any reason to have stated, that Mrs. Rashid should get the proceeds of the sale of the home after the restitution obligation was met. Also, there is no evidence the restitution obligation has been met. Finally, the benefit of the forfeited property should not pass, indirectly through Mrs. Rashid, to the criminal defendant.

### **Jurisdiction**

This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b), which states:

Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district court shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

Mrs. Rashid's motion indirectly requesting that this court determine the dischargeability of a debt is a civil proceeding arising under Title 11.<sup>1</sup> The Advisory Committee note for Rule 4007 of the Federal Rules of Bankruptcy Procedure specifically states that the dischargeability of a debt under the relevant provision in this case, 11 U.S.C. § 523(a)(7), is an issue over which jurisdiction is held concurrently "by the bankruptcy court or any appropriate nonbankruptcy forum."

Even though this court has jurisdiction over the dischargeability of a debt, courts usually assert such jurisdiction upon a debtor or creditor filing a complaint. Rule 4007 of the Federal Rules of Bankruptcy Procedure states, "A debtor or any creditor may file a complaint with the court to obtain a determination of the dischargeability of any debt." See also 4 Collier on Bankruptcy ¶ 523.04 (Lawrence P. King ed., 15<sup>th</sup>

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<sup>1</sup> Even though her motion is made in a criminal case, the adjudication of the motion can be considered a civil proceeding because she requests a civil remedy after the close of the criminal case. See, e.g., United States v. Bein, 214 F.3d 408, 411 (3d Cir. 2000) ("A district court has jurisdiction to entertain a motion for return of property even after the termination of criminal proceedings against the defendant and such an action is treated as a civil proceeding for equitable relief.")

ed. 1996) ("The procedure for dischargeability proceedings is governed by Federal Rule of Bankruptcy Procedure 4007, which in turn provides that such an action is an adversary proceeding that must be initiated by the filing of a complaint.")

In the instant case, no one has filed a dischargeability complaint before this court. Mrs. Rashid has filed this motion as part of the criminal proceeding which resulted in the forfeiture of 444 East Mount Pleasant Avenue. This court concludes that it has jurisdiction despite the absence of a complaint because it has jurisdiction over the continuing force of the criminal forfeiture order. Further, the relief Mrs. Rashid requests turns on an interpretation of the court's previous forfeiture order, which is an issue that the sentencing court is better suited to determine.

### **Discussion**

#### I. The Forfeiture is Exempt from Discharge.

Section 521(a)(7) of the U.S. Bankruptcy Code exempts from discharge any amount "to the extent such debt is a fine, penalty, or forfeiture, payable to and for the benefit of a government unit, and is not compensation for actual pecuniary loss." The third circuit noted that a debt must meet three requirements to be nondischargeable under this provision: 1) the debt must be a

fine, penalty, or forfeiture; 2) the debt must be payable to and for the benefit of a governmental unit; and 3) the debt must not be compensation for actual pecuniary loss. See In Re Rashid, 210 F.3d at 205. See also In Re Towers, 162 F.3d 952, 954-55 (7<sup>th</sup> Cir. 1998).

The first requirement is met. The home was forfeited to the government pursuant to a criminal forfeiture statute which requires the sale of a criminal res as punishment, that is, as "a fine, penalty, or forfeiture." Statutorily, a forfeiture to the United States is a forfeiture for the benefit of the United States. The debt was not compensation for pecuniary loss, but rather an automatic penalty for laundering criminal fraud proceeds.

At the end of the Judgment and Final Order, the court gave the following instructions to the U.S. Marshals Service:

1. The United States Marshal Service, from the proceeds of the sale commonly known as 444 East Mount Pleasant Avenue, Philadelphia, Pennsylvania, a parcel of real property, shall deduct first its' cost in connection with the forfeiture and the sale of the property and thereafter, shall pay Society Hill Savings and Loan Association as to unpaid interest at the contractual (not default) rate of 11% per annum as provided in the Court's Order of November 27, 1995.
2. The United States Marshals Service shall take all steps necessary to dispose of said property in accordance with the law and the rules of this Court and shall, as provided in the order of forfeiture, transfer proceeds on the sale of Amin A. Rashid's property to the United States Marshals Service, Eastern District of Pennsylvania, to be applied to the restitution ordered by the court.

The United States Government chose to use any remaining sums to help victims of Mr. Rashid's crime. The above order reflected that request.<sup>2</sup>

Historically, the purpose of criminal forfeiture is to benefit the government. Criminal forfeiture is usually mandatory and designed to ensure that a defendant does not profit from his crimes. Restitution, on the other hand, is often discretionary and designed to compensate victims for their loss. See United States v. Johnston, 199 F.3d 1015, 1018 (9<sup>th</sup> Cir. 1999). No legal provision commands the government to use the funds from forfeiture in a particular way. Indeed, this court's order of forfeiture "vested all rights, title, and interest" in the property in the United States Government. The United States became owner of the property and necessarily had the freedom to do with it as it wished.

In In re Rashid, 210 F.3d at 206, the third circuit followed the reasoning of In re Towers, 162 F.3d 952 (7<sup>th</sup> Cir. 1998). In Towers, the seventh circuit determined that a restitution obligation was dischargeable because it was not payable to a governmental unit. 162 F.3d at 956. The Towers court focused on the fact that the restitution in that case was not "elective."

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<sup>2</sup>This court is aware of no statutory authority for ordering the United States to dispose of forfeited funds in a particular way. The government requested an instruction to the U.S. Marshals to distribute funds to Mr. Rashid's victims in a proposed order filed in this court on May 13, 1997. This order cannot be read as a requirement by this court that the government use the forfeited amount to compensate the victims.



According to the law, the Attorney General had no choice but to distribute the relevant sum of money to the victims of the relevant crime. 162 F.3d at 956-57.

Rashid's forfeiture is just the kind of case that was distinguished in Towers. The forfeiture was payable to the benefit of the government and the government could do as it wished with the money. See also United States Dep't of Hous. & Urban Dev. v. CCMV, 64 F.3d 920, 927-28 (4<sup>th</sup> Cir. 1995) (finding a debt not dischargeable under 521(a)(7) in part because the final judgement order "imposes no obligation on HUD to disburse the money to anyone").

Further, Congress intended that amounts subject to criminal forfeiture under 18 U.S.C. § 982(a)(1) not be discharged in bankruptcy. Section 982(b)(1) states that the forfeiture under such act will be governed by 21 U.S.C. § 853. That section provides:

Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United State shall expire and shall not revert to the defendant....

(Emphasis added). This provision demonstrates that once property is forfeited to the United States, it cannot revert to the defendant under any circumstances. If the proceeds of the sale of the forfeited home were discharged in bankruptcy, the proceeds

would be reverting back to the defendant.

Since this court finds that the disputed sum in this case was "payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss" as required by 11 U.S.C. § 521(a)(7), the forfeiture order is not dischargeable in bankruptcy.

## II. Joyce K. Rashid is Not Entitled to the Proceeds of the Forfeiture.

Even if the proceeds of the forfeiture were dischargeable in bankruptcy, Mrs. Rashid would not receive the proceeds of the of the sale of the home. Mrs. Rashid claims, "The Court has on prior occasion ruled that any proceeds of the sale of 444 East Mount Pleasant Avenue remaining after payment and costs of restitution be distributed to Joyce K. Rashid." (Joyce K. Rashid's Motion to Recover Proceeds at 2). Mrs. Rashid makes no reference to any record support for such an assertion. Indeed, no such ruling could have occurred. This court ruled on July 19, 1994, that Mrs. Rashid could not be declared an "innocent owner" of the home and thus could not have a continued legal property interest in 444 East Mount Pleasant Avenue.

Finally, this court would have had no power to make the ruling claimed. There is no legal authority that authorizes this

court to order the United States to turn over the proceeds of forfeited property to anyone for any reason. This court's final forfeiture order of May 16, 1997, pursuant to the judgment molded on December 27, 1993, "vested all right, title, and interest" in the property in the United States Government. On its face, that Order demonstrates that Mrs. Rashid's assertion that the court made a ruling to the contrary was misreclected.

An appropriate Order follows.

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UNITED STATES OF AMERICA	:	CRIMINAL NO.
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	:	
AMIN A. RASHID	:	

**ORDER**

AND NOW, this 27th day of October 2000, upon consideration of Joyce K. Rashid's Motion to Recover Proceeds of the Sale of 444 East Mount Pleasant, and the government's answer, it hereby is ORDERED that the Motion is DENIED for the reasons stated in the attached Memorandum.

BY THE COURT:

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JAMES T. GILES, C.J.

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